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IN THE

Supreme Court of the United States

OCTOBER TERM, 19.....

No. 840

NOBLE DRILLING CORPORATION,
Petitioner,

versus

EUNICK P. SAUNIER, JR.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ADAMS AND REESE,
W. FORD REESE,
THOMAS J. WYLLIE,
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HAUSER PRINTING CO., INC., NEW ORLEANS

TABLE OF CONTENTS

	PAGE
I. Citations to Opinions Below	1
II. Jurisdiction	2
III. Questions Presented for Review	2
IV. Statement of the Case	2
V. Reasons for Granting the Writ	3
(1) Discussion of Question (A)	4
(2) Discussion of Question (B)	7
VI. Conclusion	9
Certificate	10
Appendix	
A. Opinion of the Circuit Court of Appeals	11
B. Opinion of the Circuit Court of Appeals on Re-hearing	13

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the United States:

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered in the above entitled case on July 28, 1964, wherein a re-hearing was denied on November 4, 1964.

I.

CITATIONS TO OPINIONS BELOW

The District Court entered judgment on a jury verdict favorable to the plaintiff without written opinion. The opinion of the Circuit Court of Appeals is printed in Appendix A hereto, *infra* p. 11 and is reported in 335

F. 2d 62 (5th Cir. 1964). Rehearing in the Circuit Court of Appeals was denied without a written opinion, Appendix B, *infra* p. 13.

II.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 28, 1964. Rehearing was denied on November 4, 1964. Jurisdiction was vested in the United States District Court by virtue of the Jones Act, 46 U.S.C. Section 688. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. Section 1254(1).

III.

QUESTIONS PRESENTED FOR REVIEW

(A) Whether the "status" questions determinative of an oil field workers remedies for injuries received aboard a submersible drilling rig include the question whether the rig has the status of being in or out of "navigation" at the time of the injury. Cf., *Roper v. United States*, 368 U.S. 20 (1961).

(B) Whether the definitions normally used in litigation of this type in the trial courts general charge on "status," in effect, direct the result the jury is to reach on those issues thereby preventing the jury from reaching an impartial and uninfluenced determination.

IV.

STATEMENT OF THE CASE

Eunick Saunier sued Noble Drilling Corporation to recover damages for injuries resulting from a fall which occurred while he was employed as a roughneck on an off-shore submersible drilling rig operating in the Delta Duck Field in Plaquemines Parish, Louisiana. The case

was tried to a jury on questions of negligence under the Jones Act (46 U.S.C. Section 688) and unseaworthiness.

The jury returned a verdict for the plaintiff from which an appeal was taken by the defendant. The Court of Appeals for the Fifth Circuit affirmed the verdict for the plaintiff and subsequently denied the defendant's petition for rehearing.

V.

REASONS FOR GRANTING THE WRIT

The general charge to the jury used by trial courts in this locality on the status questions presented by litigation involving offshore oil field employees does not incorporate all of the questions of status necessary for the proper determination of the appropriate remedy available to the plaintiff. The charge as presently used simply requires the jury to determine whether the structure is a vessel and whether the employee is more or less permanently employed upon the vessel in a capacity which contributed to the accomplishment of her mission. The charge fails to require a determination of whether the structure involved, if found to be a vessel, was "in navigation" at the time of the injury and therefore is incorrect as a matter of law. Furthermore, the definitions used to assist the jury in the status questions that are presented, while perhaps correct abstract statements of the law, nevertheless, in the context of the general charge to a jury create such an imbalance in the charge that it is tantamount to a directed verdict.

This general charge to the jury, with its inherent faults, is in constant use in the area which produces the majority of the litigation concerning offshore oil field injuries. It is respectfully submitted that it is necessary for the Writ of Certiorari to issue herein in order to

provide the opportunity to review and correct the errors of law which exist in a body of law presently in constant use.

Discussion of Question (A)

The charge to the jury by the court below did not properly present to the jury the question of whether or not the drilling rig was "in navigation" at the time of the injury.

The usual general charge to the jury in litigation of this type in this area has evolved from *Robinson v. The Offshore Co.*, (unreported), *aff'd sub nom, Offshore Co. v. Robison*, 266 F. 2d 769 (5th Cir. 1959). A reading of the whole of this usual type of charge, as illustrated by the jury charge used by the trial court below, and the interrogatories to the jury used in conjunction with it, clearly reveals that the principal emphasis by the court is on the questions whether the structure involved is a vessel and whether the plaintiff is more or less permanently employed upon the vessel in a capacity which contributed to the accomplishment of her mission.

However *Roper v. United States*, 368 U.S. 20 (1961), shows that emphasis must be placed on an additional factor in the status questions involved. The jury must be directed to consider whether the structure, if a vessel, was in navigation at the time of the injury. Sufficient emphasis was not placed on this question by the court below as illustrated by a reading of the charge at pages 476-77 of the record and the interrogatories that were presented to the jury. The question whether a drilling structure, if considered a vessel, was in navigation at the time of the injury is of vital importance in litigation of this type and deserves comprehensive definition and equal emphasis as enjoyed by the other status questions.

It is of vital importance because in order to obtain a valid determination of the injured man's rights it is necessary to obtain a distinct and definite determination of whether the vessel was in navigation at the time of the injury. This is so because **neither** the Jones Act remedy **nor** the warranty of seaworthiness is owed a seaman aboard a vessel that is **not in navigation.** *West v. United States*, 361 U.S. 118 (1959); *Desper v. Starved Rock Ferry Co.*, 342 U.S. 187 (1952). It is this lack of definition of when a vessel is in navigation and the lack of sufficient emphasis on the question that constitutes the error complained of herein.

The lower court's charge to the jury concerning whether the structure or vessel was in navigation or not (Tr. 477) leaves the definite impression that the only time it would be out of navigation is when it is in need of major repairs or laid up for the winter. The charge in this particular case even goes on to caution the jury, however, that **"we do not have that situation here"** (Tr. 477) leaving the obvious impression that the question was not at issue. However, the reasoning of the Court in the *Roper* decision establishes that a change in purpose of the function of the structure may also be considered as removing the vessel from navigation. There a Liberty ship was converted into a grain warehouse and the mere movement of the vessel to another location did not place her back in navigation. Even though "plying navigable waters" she was not in navigation. This factual pattern is directly analogous to the submersible drilling barge type of offshore oil field drilling operations. A structure whose primary function is to provide a stationary base for a drilling operation is occasionally moved from one location to another by floating it across navigable waters. It too is moved and controlled by tug boats. When in motion, its sole purpose is to move the drilling equipment

from one location to another. While it could easily be argued that the structure is in navigation during its movement, nevertheless, it is equally logical to argue that it has been removed from navigation once it reaches its location, the structural modifications necessary to drilling an oil well are accomplished, and its sole purpose once again is to provide a stationary base for the drilling equipment.

Undisputed evidence in the instant case established that the rig was involved in drilling a well. The drilling operation by its very nature requires that the structure be firmly attached to the earth's crust by tons of surface pipe and drill casing cemented to the earth's formation in several places at the same time that it is bolted and welded to the structure's drilling apparatus. Any surface movement of the structure in this condition is not a reasonably foreseeable event, but would be, in reality, a disaster. Because of its deep roots in the earth, it is a far cry from a transoceanic liner at berth. Cf., *Senko v. LaCrosse Dredging Corporation*, 352 U.S. 370 (1957). It is no longer capable of navigation without extensive preparation for its forthcoming movement. The drilling operation must be discontinued, the well completed, cemented, and completion tools installed. The structure must then be disconnected from the well head and the pumps switched from their drilling function to the jetisoning systems. It is submitted that the structure has been withdrawn from and is out of navigation while drilling, and requires extensive preparation prior to future navigation. *Roper v. United States, supra.* Even the Coast Guard regards the structure in this condition as an island and not as a vessel in navigation.

The factual picture thus presented clearly outlines the issue in question but the lower court's charge to the

jury not only failed to present the question with the necessary definitions and emphasis but in effect removed the issue from their determination. Unless the characteristics of the status of "navigation" are sufficiently defined and emphasized by the trial court in its charge to the jury, it is impossible to obtain a valid jury determination of the plaintiff's rights because one vital question of status has been omitted. This question cannot be omitted or de-emphasized because the *Roper* decision establishes that the rights of a seaman injured aboard a vessel turn on the question whether the vessel was in navigation at the time of the injury. It is respectfully submitted that such an omission of one vital element of status is of such manifest error that only a new trial can provide justice to both parties.

Discussion of Question (B)

The definitions commonly used by the lower courts in cases of this type regarding the status of the employee as a seaman and of the structure as a vessel may be correct statements of law in the abstract but in the context of a charge to the jury is tantamount to informing the jury that many relevant facts need not be considered. The definitions also create a lack of balance in the charge which, by inference, direct the result the jury is to reach.

Much of the impact of the general charge stems from language similar to that used in the charge on status in *Robison v. The Offshore Co., supra.*

> "The real but no means mechanical test is whether the claimant is more or less permanently employed aboard the vessel by her owner in a capacity in which he contributes to the accomplishment of the vessel's mission. For example, cooks on board vessels may be just as important as navigators, and **drillers on vessels used as drilling rigs** may be

> more important than navigators, and musicians may assist in the entertainment of passengers. Consequently, cooks, drillers, musicians, telephone operators, or anyone else who is attached to a vessel may be called seamen, and consequently members of the vessel and they may be, therefore, covered by the Jones Act." (emphasis supplied)

The specific reference to "drillers on vessels used as drilling rigs" and "drillers * * * may be called seamen" do nothing else but affix in the jury's mind that "the judge is telling us this thing is a vessel and this oil field worker is a seaman" regardless of any subsequent qualifying language such as "may be". Further language relating to the meaning of the term vessel—that it "can be a special structure such as a submersible drilling rig" and that the fact that it was "sunk to the bottom, in order to perform its function as a drilling rig" does not preclude it from being a vessel—may be correct abstract statements of the law, but in the context of the general charge constitute negatives obviously pregnant with the affirmative that the structure is a vessel and the man a seaman. The mere fact that the charge goes on to direct the jury that it is up to them to decide does not destroy the obvious inference left from the charge.

The Supreme Court, in every reference to this issue has stated time and time again that the status of the structure as a vessel and the employee as a seaman is a matter for the jury's determination. The only reasonable interpretation of this mandate is that it is the Court's intention that the jury receive all relevant evidence and be introduced fairly as to the law in the light of the evidence. Any charge to the jury that takes specific facts from the evidence and instructs that the existence of these facts does not preclude recovery does not fairly answer to this requirement. Such a charge is, in effect,

taking that particular fact referred to away from the jury.

The defendant below, in their requested instructions which were denied, had requested that specific considerations relevant to the jury's determination be brought to their attention. These considerations would make it apparent to the jury that it is still for their determination whether the structure and employee are both in the status necessary for recovery. These, or similar instructions would cure the general charge from the taint of error resulting from the implication of a directed verdict, and the failure to so instruct the jury constitutes grave prejudicial error. All the petitioner herein asks is that the jury be allowed to weigh all relevant evidence and reach their own common sense conclusion on the status of the structure and employee, without their judgment being influenced by a limitation and lack of balance in the general charge.

VI.

CONCLUSION

For the above reasons, it is respectfully submitted that this petition should receive favorable consideration and a Writ of Certiorari be granted.

Respectfully submitted,

ADAMS AND REESE,
W. FORD REESE,
THOMAS J. WYLLIE,
Attorneys for Noble Drilling Corporation.

CERTIFICATE

I hereby certify that a copy of the foregoing Petition of a Writ of Certiorari on behalf of Noble Drilling Corporation has this day been placed in the United States Mail, postage prepaid, addressed to Mr. John Nelson, Attorney for the plaintiff, 328 Chartres St., New Orleans, Louisiana.

New Orleans, Louisiana

January _____, 1965.

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21317

NOBLE DRILLING CORPORATION,
Appellant-Appellee,

versus

EUNICK P. SAUNIER, JR.,
Appellee-Appellant.

(AND REVERSE TITLE)

Appeals from the United States District Court for the Eastern District of Louisiana.

(July 28, 1964.)

Before TUTTLE, Chief Judge, and WISDOM, Circuit Judges, and McRAE, District Judge.

PER CURIAM: Eunick Saunier sued Noble Drilling Corporation to recover damages for injuries resulting from a fall which occurred while he was employed as a roughneck on an off-shore submersible drilling rig. The case was tried to a jury on questions of negligence under the Jones Act (46 U.S.C.A. § 688) and unseaworthiness. The jury returned a verdict for the plaintiff and an award of $83,670.71.[1] We affirm.

[1] The jury found plaintiff's damages to be $100,000. The award represents a 10 per cent reduction based upon plaintiff's negligence and a credit of $6,329.29 for medical bill which defendant had already paid.

The appellant contends that the trial judge erred in its general charge, erred in granting certain special instructions offered by the plaintiff, and erred in refusing certain requested instructions of the defendant. We hold that the instructions, taken as a whole, are not erroneous. The court's definitions of (1) "seaman", (2) "vessels in navigation", and (3) "navigable waters" conform to the state of the law. See (1) *Senko v. LaCrosse Dredging Co.*, 1957, 352 U.S. 370; *Offshore Co. v. Robison*, 5 Cir. 1959, 266 F. 2d 769; (2) *Gianfala v. Texas Co.*, 1955, 350 U.S. 879; (3) *Norton v. Warner Co.*, 1943, 321 U.S. 565; *Gahagan Construction Corporation v. Armao.*, 1 Cir. 1948, 165 F. 2d 301.

We have considered the appellant's other objections, and see no errors in the proceedings below to justify interference with the jury determination.

We AFFIRM the district court's denial of the plaintiff's claim for maintenance and cure.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21317

NOBLE DRILLING CORPORATION,
Appellant,

v.

EUNICK P. SAUNIER, JR.,
Appellee

(AND REVERSE TITLE)

Appeal from the United States District Court for the Eastern District of Louisiana.

ON PETITION FOR REHEARING

(Nov. 4, 1964)

Before TUTTLE, Chief Judge, and WISDOM, Circuit Judges, and McRAE, District Judge.

PER CURIAM: It is ORDERED that the petition for rehearing filed in the above entitled and numbered cause is hereby DENIED.

Petition for Rehearing filed: 9/2/64
Petition for Rehearing denied: 11/4/64